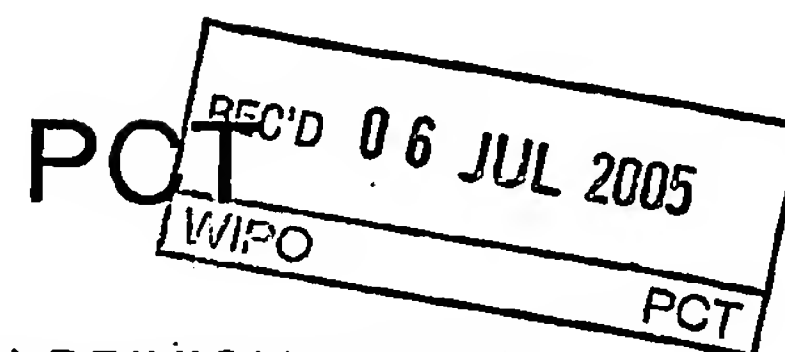


# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220



## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/EP2005/003139

International filing date (day/month/year)  
24.03.2005

Priority date (day/month/year)  
31.03.2004

International Patent Classification (IPC) or both national classification and IPC  
B01F11/00, B01F15/00, G01N21/00

Applicant  
PASSONI, Giovanni

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/003139

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**Box No. II Priority**

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1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/003139

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**Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	5-8
	No: Claims	1-4
Inventive step (IS)	Yes: Claims	5-8
	No: Claims	1-4
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

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**Box No. VI Certain documents cited**

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**1. Certain published documents (Rules 43bis.1 and 70.10)**

and /or

**2. Non-written disclosures (Rules 43bis.1 and 70.9)**

**see form 210**

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

**see separate sheet**

**Re Item V**      **Reasoned statement under Rule 43bis1(a)(i) PCT with regard to novelty,  
inventive step or industrial applicability;  
Citations and explanations supporting such statement**

**1.      STATE OF THE ART**

Reference is made to the following documents:

D1:	JP 58 191955 A	D2:	JP 56 094244 A
D3:	JP 04 130248 A	D4:	US 2002/042141 A1
D5:	US-A-4 372 683	D6:	EP-A-0 494 846
D7:	US-A-4 265 544	D8:	JP 2004 109051 A
D9:	JP 2001 249073 A	D10:	JP 2001 218755 A

**2.      NOVELTY [Art. 33(2) PCT], INVENTIVE STEP [Art. 33(3) PCT]**

2.1      The lack of clarity objections given under item VIII of present opinion notwithstanding, the subject-matter of **independent claim 1** is not new in the sense of Art. 33(2) PCT, and therefore the criteria of Art. 33(1) PCT are not met.

D1 discloses (references in parentheses applying to D1) a powered test tube agitation device including a small plate having a rest (cf. reference sign 5) for a test tube (test tube 1) to be agitated and operated in agitation by a powered mechanism (motor 10) and characterized in that the powered mechanism is started by means of optical detection (abstract; first projector 11a) of the entry of an object into a predetermined zone above the small plate.

2.2      Furthermore, the subject-matter of **claims 2 to 4** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to novelty and/or inventive step,

and which could render the subject-matter of claim 1 new (Art. 33(2) PCT) and inventive (Art. 33(3) PCT).

- 2.3 However, the combination of the features of **dependent claims 5 to 8** is supposed to be neither known from nor rendered obvious by the available prior art.

**3. INDUSTRIAL APPLICABILITY [Art. 33(4) PCT]**

- 3.1 For the assessment of the present claims 1 to 8 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims.

The present application is considered to be industrially applicable, Art. 33(4) PCT, Rule 67.1(i)-(vi) PCT, cf. also Guidelines PCT/GL/ISPE/1 14.01-14.06.

**Re Item VI Certain documents cited**

- 4.1 As a precautionary measure, the applicant is informed that document D8 indicated in the international search report as a P-document might be regarded as state of the art during a further national proceeding.

**Re Item VIII Certain observations on the international application**

- 5.1 Some of the features in the apparatus claim 1 relate to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features (cf. "...agitated...operated...is started..."). The intended limitations are therefore not clear from this claim, contrary to the requirements of Art. 6 PCT.
- 5.2 The relative and unclear term "...small..." used twice in claim 1 has no well-recognised

- meaning and leaves the reader in doubt as to the meaning of the technical feature to which it refers, Art. 6 PCT.
- 5.3 Claim 4 should be corrected using the wording "...means includes..."; claim 5 should be corrected using the term "...activates...".
- 5.4 The vague and imprecise statements in the description on p. 2 lines 8, 9, and on p. 5 lines 6 to 9, referring to 'non-limiting effects', imply that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity when used to interpret them, Art. 6 PCT.
- 5.5 The meaning of the expression "...contactless operation..." is unclear, cf. f.ex. p. 1 line 4.
- 5.6 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 is not mentioned nor identified in the description.
- 5.7 A document reflecting the prior art described on p. 1 lines 5 to 20 is not identified in the description, Rule 5.1(a)(ii) PCT.

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